

PAL/ED  
CLERK, U.S. DISTRICT COURT

2004 NOV 30 P 4:46

SNELL & WILMER L.L.P.  
Alan L. Sullivan (3152)  
Todd M. Shaughnessy (6651)  
Amy F. Sorenson (8947)  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101-1004  
Telephone: (801) 257-1900  
Facsimile: (801) 257-1800

CRAVATH, SWAINE & MOORE LLP  
Evan R. Chesler (admitted pro hac vice)  
David R. Marriott (7572)  
Worldwide Plaza  
825 Eighth Avenue  
New York, New York 10019  
Telephone: (212) 474-1000  
Facsimile: (212) 474-3700

*Attorneys for Defendant/Counterclaim-Plaintiff  
International Business Machines Corporation*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC.

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS MACHINES  
CORPORATION,

Defendant/Counterclaim-Plaintiff.

**DEFENDANT/COUNTERCLAIM  
PLAINTIFF IBM'S EX PARTE MOTION  
FOR LEAVE TO FILE OVERLENGTH  
OPPOSITION TO SCO'S MOTION FOR  
LEAVE TO FILE A THIRD AMENDED  
COMPLAINT**

Civil No. 2:03CV0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

328

Pursuant to DUCivR 7-1(e), Defendant/Counterclaim-Plaintiff International Business Machines Corporation (“IBM”) respectfully submits this Ex Parte Motion for Leave to File Overlength Opposition to SCO’s Motion for Leave to File a Third Amended Complaint Pursuant to Federal Rules of Civil Procedure 15(a) and 16(b), consisting of approximately fifteen pages of argument, exclusive of face sheet, preliminary statement, declarations and exhibits.

In support of its motion to amend, SCO submitted an overlength memorandum some twenty-five pages long, asserting that such length was necessary for SCO to fully address for the Court the importance of the proposed amendment to SCO. Although IBM endeavored to address each of SCO’s arguments succinctly in its opposition memorandum, doing so nevertheless resulted in the need for approximately fifteen pages of legal argument, five additional pages of argument beyond the ten pages allotted by DUCivR 7-1(3).

For the foregoing reasons, IBM respectfully requests that it be granted leave to file the opposition memorandum submitted concurrently herewith, consisting of approximately fifteen pages of argument.

DATED this 30 day of November, 2004.

SNELL & WILMER L.L.P.



Alan L. Sullivan  
Todd M. Shaughnessy  
Amy F. Sorenson

CRAVATH, SWAINE & MOORE LLP  
Evan R. Chesler  
David R. Marriott

*Attorneys for Defendant/Counterclaim-  
Plaintiff International Business Machines  
Corporation*

Of counsel:

INTERNATIONAL BUSINESS MACHINES CORPORATION  
Donald J. Rosenberg  
Alec S. Berman  
1133 Westchester Avenue  
White Plains, New York 10604  
(914) 642-3000

*Attorneys for Defendant/Counterclaim-Plaintiff  
International Business Machines Corporation*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 30<sup>th</sup> day of November, 2004, a true and correct copy of the foregoing was hand delivered to the following:

Brent O. Hatch  
Mark F. James  
HATCH, JAMES & DODGE, P.C.  
10 West Broadway, Suite 400  
Salt Lake City, Utah 84101

and was sent by U.S. Mail, postage prepaid, to the following:

Stephen N. Zack  
Mark J. Heise  
BOIES, SCHILLER & FLEXNER LLP  
100 Southeast Second Street, Suite 2800  
Miami, Florida 33131

Robert Silver  
Edward Normand  
Sean Eskovitz  
BOIES, SCHILLER & FLEXNER LLP  
333 Main Street  
Armonk, New York 10504



Amy F. Sorenson